Supreme Court, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 2001

JAMES L. PRATT, MICHAEL T. ANGELINI, and ERIC J. BROWN,

Petitioners,

v.

NATIONAL POSTAL MAIL HANDLERS UNION, LOCAL 305 and UNITED STATES POSTAL SERVICE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the court of appeals erred in finding that a Union does not breach its duty of fair representation when the Union revokes three employee grievance settlement agreements that were obtained by them directly under the collective bargaining agreement ("CBA"), because the Union has later signed a memorandum of agreement outside the grievance-arbitration provisions of the CBA with the employer to do so.

2. Whether the court of appeals erred by creating a conflict with the Fifth, Sixth, Seventh, and Eighth Circuits by holding that employee grievance settlements are no longer independently enforceable contracts under Section 301 of the LMRA.

3. Whether the court of appeals erred by resolving on summary judgment the meaning of the contract term "nonbargaining unit" in the CBA, where the meaning of the term was disputed by representatives of both the Union and Postal Service management.

4. Whether the court of appeals erred by holding contrary to this Court's directive in *General Drivers, Warehousemen & Helpers, Local No. 89 v. Riss & Co.*, 372 U.S. 517 (1963), that the federal courts may resolve the meaning of contract language on summary judgment rather that confining the parties to their contractual grievance arbitration procedure to do so.

LIST OF PARTIES

Petitioners here are three individuals: James L. Pratt, Michael T. Angelini, and Eric J. Brown.

The Respondents in this case are: The National Postal Mail Handlers Union, Local 305 and the United States Postal Service.

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NATIONAL POSTAL MAIL HANDLERS UNION, LOCAL 305 and UNITED STATES POSTAL SERVICE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

Petitioners James L. Pratt, Michael T. Angelini, and Eric J. Brown ("Petitioners") respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit is unreported. The opinion of the United States District Court for the Eastern District of Virginia is also unreported. These opinions and Orders

are reproduced in the appendix at pages 1a and 13a, respectively.[1]

JURISDICTION

The judgment of the court of appeals was entered on January 10, 2002. A timely petition for rehearing was filed on February 23, 2002, and denied on March 11, 2002. This Court has jurisdiction to review the judgment of that court under 28 U.S.C. § 1254(1)

STATUTES INVOLVED

29 U.S.C. § 185(a) provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

39 U.S.C. § 1209(a) provides:

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[1] "_a" references are to the accompanying Appendix hereto." "App." references are to the Joint Appendix filed in the court below.

> Employee-management relations shall, to the extent not inconsistent with provisions of this title, be subject to the provisions of subchapter II of chapter 7 of title 29.

STATEMENT OF THE CASE

This Petition arises from the Fourth Circuit's denial of Petitioners' appeal from an Order on summary judgment granted to the two Respondents here. The appellate court held that Respondent Union had not violated its duty of fair representation when it entered into an agreement with the Postal Service to revoke the Petitioner's final written grievance settlements. That decision completely undermines the sanctity of the contractual obligation the Congress established under the Labor Management Relations Act, 29 U.S.C. § 185.

On January 30, 1999, Petitioner Eric J. Brown transferred from his full time mail handler position at the Processing & Distribution Center in Merrifield, Virginia, to a position in the Springfield, Virginia, Post Office as a letter carrier. Prior to doing so, he discussed his contractual ability to return to his mail handler job with his Union Shop steward. Mr. Brown returned to Merrifield five days later on February 5, 1999.

On July 18, 1998, Petitioner James L. Pratt, transferred from his full time mail handler position at Merrifield, Virginia, to a position in the Stafford, Virginia,

Post Office as a custodian. On July 3, 1999, he transferred back to the Merrifield plant.

Similarly, On April 10, 1999, Petitioner Michael T. Angelini transferred from his full time mail handler position at Merrifield, Virginia to a mail handler position in the Tampa, Florida, Post Office Processing & Distribution Center. Mr. Angelini also talked to the Union's Administrative Vice-President ("AVP") John Holmes and to union shop steward James McLaughlin about his right to transfer back to Merrifield within one year. He transferred back to the Merrifield plant effective less than two months later (June 5, 1999).

Mr. Pratt had almost fourteen years of seniority in the mail handler bargaining unit when he left. Before he did so, he conferred with AVP Holmes. As an officer of Local 305 under its Constitution and By-Laws, Mr Holmes possessed the authority to interpret the union's contract and file grievances. 3a. He advised Mr. Pratt that under the terms of the union's collective bargaining agreement (or "CBA"), he could leave for up to one year and return as a full time mail handler with seniority, minus the time he was away.

In each case, the individual Petitioner here was advised that he might return as a Part Time Flexible ("PTF") employee[2] under Postal Service policy and that

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[2]PTF status erased the guarantee of forty hours of work each (continued...)

it was necessary to file a grievance to claim his contractual right to return under the CBA. Each Petitioner did so. 3a.

The relevant provisions of the collective bargaining agreements span two contract terms. The relevant part of Article 12.2 G7 of the CBA, entitled "Principles of Seniority," reads as follows:

> An employee who left the bargaining unit on or after July 21, 1973 and returns to the bargaining unit:
>
> G7b will begin a new period of seniority if the employee returns from a nonbargaining unit position within the Postal Service, unless the employee returns within 2 years from the date the employee left the unit except as follows:
>
> G7b1 An employee who left the craft and/or installation after the date of the issuance of the arbitration award determining the terms and conditions of the 1994 National Agreement, and returns to the craft and/or installation, will begin a new period of seniority unless the employee returns ***within 1 year from the date that the employee left the craft and/or installation***. (Emphasis added).

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[2](...continued)
week, a dedicated five day work week, all holiday pay, the right to bid on new job openings, the right to work any available overtime, and all seniority privileges.

Every witness in the trial court agreed that the collective bargaining unit covered in the 1994-98 and 1998-2000 Mail Handlers CBAs provides coverage for "career mail handlers in the Postal Service" and not letter carriers, supervisors, or even casual employees.

In addition, a Letter of Intent accompanied each CBA and was written by the Postal Service's applicable chief management labor official. It confirmed to the Union's National President, *e.g.*, that "[d]uring negotiation of the 1994 National Agreement, we agreed that references to a union, craft *or bargaining unit* are limited to the National Postal Mail Handlers Union and the craft it represents...." *See* App. 392; 524 (emphasis added).[3]

Petitioner Brown after his short absence from the USPS Merrifield facility, sought Union steward Frank Murphy's assistance to file a grievance to reclaim his seniority under the contract. Mr. Murphy discussed the situation with AVP Holmes. They agreed that Article 12.2 G.7 of the CBA applied to the Plaintiffs' situations. The two then met with the Postal Service's Plant Manager and the parties agreed that Mr. Brown should return with his seniority. App. 282 ll.10-17.

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[3] "[A] letter of intent would have had the agreement of the union before it became a letter of intent." App. 474 ll.2-4. These Letters of Intent are "prenegotiated." *Id.* at ll.11-15.

As a result of the filed grievances, each Petitioner was restored to full-time status to his previous position with his seniority regained minus the days he was away.

Each of the written Grievance Settlements involved here included the following provision:

> By virtue of this ***full and final settlement agreement***, this document shall also serve as the union's official notification to management that it is withdrawing this case from the Grievance/Arbitration Procedure. Additionally, ***both parties agree*** that the settlement ***is non-precedent setting and will not be cited by either in any subsequent grievance*** or arbitration hearing. (Emphasis added).[4]

Some time after the Petitioners returned to Merrifield, other union stewards took note of the fact that the Petitioners had regained their seniority. The stewards' ultimate complaint was that the return of Pratt and Angelini hurt the other stewards by their superior seniority under the contract. App. 415 ll.1-4.

Steward Burnside filed a grievance claiming that the Petitioners should have remained PTFs or that all other PTFs should be made full-time regular employees and made financially whole. The Postal Service denied

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[4]Petitioner Michael Angelini verbally protested his reduction in employment and seniority status to the Union shift/tour chief shop steward and his grievance was settled by the Postal Service at Step 1 under Article 15.2 of the CBA consistent with the settlements made concerning Petitioners Brown and Pratt.

Burnside's grievance at Step 1 of the Grievance-Arbitration Procedure on the grounds that the Plaintiffs' situations were covered by Articles 12.2 G7b1 & 2 of the CBA and they were entitled to return with appropriate seniority. App. 228-30.

Consequently, this "Burnside" grievance was withdrawn on August 24, 1999, with "[m]anagement and the Union agree[ing] to withdraw grievance #NOVA99-DFB015 *from any and all grievance procedures forthwith.*" App. 231 (emphasis added). Local 305 Union President Jones instructed that the grievance be withdrawn so that it would no longer be subject to the grievance arbitration procedure of the CBA.

Several weeks later, local union and postal service officials signed a memorandum of agreement that stripped the three Petitioners of their grievance settlements.

In relevant part, the Memorandum of Agreement, App. 352, found the Plaintiffs' grievance settlement agreements to be "unenforceable," "declared null and void," ordered the plaintiffs to be reduced to PTF status, and eliminated their accumulated seniority at Merrifield, Virginia, within thirty days of the signing.

In Mr. Holmes' experience as an AVP and 25 year career as a union official, he never heard of a grievance settlement being overturned by the independent action of management or the union. App. 299 ll.17-20. He testified that an AVP does not have the power to make a

local agreement with management to make a grievance settlement "null and void" as occurred. App. 308 ll.9-14.

Despite this bar, the local Postal Service employee who signed the Memorandum of Agreement stated she felt the Petitioners "followed the right procedure. They just got the wrong kind of settlement." App. 383 ll.16-17.

No representative of management or labor knew of any provision in the contract for the overturning of a contract based grievance settlement by the union or the Postal Service. App. 199, 299, 300, 416 ll.12-15; 362 ll.1-9, 396 ll.10-15, 351 ll.6-9. Neither had a party to the CBA ever seen a Memorandum of Agreement between the Post Office and the union that "undid an arbitration." App. 416 ll.1-2.

On August 24, 2000, the district court issued an Order and Memorandum Opinion granting defendants' Motions for Summary Judgment. App. 156; 163. The district court first held that the Petitioners' interpretation of the undefined words "nonbargaining unit" in Article 12.2 G7b of the collective bargaining contract was contrary to the position of the union and Postal Service that "has always construed" the term "to mean supervisory or management positions." App. 158.

Union AVP John Holmes, however, had testified to the meaning of "nonbargaining unit" which is contrary to

the meaning adopted by the district court and the Fourth Circuit and that the CBA expressly permitted their return to the craft:

> Q. In a situation where a person in the mail handler craft, let's say in 1997, which is during the period of time this is in effect, leaves the Merrifield installation, and becomes a letter carrier at Quantico, and then within one year of leaving Merrifield returns, would that person be able to regain their seniority?
>
> A. My interpretation of that is yes.

App. 275.

The USPS's Answers to Plaintiff Pratt's First Set of Interrogatories admitted that the 'nonbargaining unit" interpretation it and the Union professed in the Memorandum of Agreement "is not explicitly defined in the agreement" and that the "parties have neither directly addressed nor attempted to redefine the meaning of the term." App. 67 ¶6.

In addition, the Mail Handlers National Union President knew of ***no provision*** of the contract to support this interpretation. App. 479 ll.13-16. He also knew of the existence of ***no documents*** that would define "nonbargaining unit" in Article 12.2G7 to mean supervisory employees. *Id.* at 486 ll.5-10.

AVP Holmes further testified that part of his job was to interpret and administer the contracts and this power he possessed was under Article IV, Section 5E.6. of the Uniform Local Union Constitution. App. 278 ll.13-22. He testified that the correct interpretation of the word "bargaining unit" in Article 12.2 G7c "meant the mail handler bargaining unit...because that's what the agreement was dealing with." App. 276 ll.11-16. He interpreted this Article to mean that the Plaintiffs "if they came back within the year, they would have their seniority, minus the time they were gone." Holmes 276 ll.1-3.

The appellate court disregarded this testimony. Specifically, it found that the Burnside grievance (contrary to its specific restrictive terminology as set forth above) actually revoked the Petitioners' settlement agreements: "the Postal Service and the Union settled the Burnside grievance by agreement to vacate the earlier settlement agreements involving Pratt, Angelini, and Brown, thereby returning those three employees to part-time flexible status with entry-level, seniority, and to withdraw the Burnside grievance." 4a.

Moreover, the Fourth Circuit affirmed that the summary judgment record proved that the interpretation of the CBA rendered the restoration of Petitioners' seniority to have been accomplished in contravention to the National Agreement. Therefore, because the settlements were erroneous, they did not need to be enforced and the Union's action to revoke them was not unreason-

able or in contravention to the Union's duty of fair representation.

REASONS FOR GRANTING THE WRIT

THIS COURT'S INTERVENTION IS REQUIRED TO CORRECT AN INTRACTABLE DOUBLE STANDARD BY WHICH PARTIES TO COLLECTIVE BARGAINING AGREEMENTS MAY NOW FREELY REPUDIATE FINAL CONTRACT AWARDS INURING TO THE BENEFIT OF EMPLOYEES.

This case establishes a dangerous anomaly in the law which threatens the very core of worker expectations that their collective bargaining agreements and contract grievance awards thereunder, will be enforceable and respected. By upholding the district court's conclusion that the Petitioners' grievance settlements were meaningless documents and its refusal to consider the Petitioner's material evidence, the decision below threatens all employees' right to access the courts to enforce settlement agreements and to demonstrate violations of the duty of fair representation. As a result, the court of appeals has undercut a vital protection which this Court found paramount in *General Drivers, Warehousemen & Helpers, Local No. 89 v. Riss & Co.*, 372 U.S. 517 (1963). This Court's supervisory review is required to rectify this legal mistake.

In *General Drivers*, the employer failed to comply with a grievance committee ruling and the employees sued under 29 U.S.C. § 185. This Court ruled that if the award "is under the collective bargaining agreement final and binding, the District Court has jurisdiction under § 301 to enforce it....It is not enough that the word 'arbitration' does not appear in the collective bargaining agreement, for we have held that the policy of the Labor Act 'can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given full play.'" 372 U.S. at 519, (quoting *United Steelworkers v. American Mfg. Co.*, 363 U.S. 564, 566 (1960) (arbitration agreement) and *Retail Clerks v. Lion Dry Goods*, 369 U.S. 17 (1962) (enforcing settlement agreement).

When the Mail Handlers' Union here sought to undermine the Plaintiffs' seniority by undertaking a ***non-contract process*** to achieve its end, through the "Memorandum of Agreement," it breached its duty of fair representation in a manner not dissimilar to sacrificing one set of employees' rights "in favor of another stronger or more politically favored group." *Gainey v. Bhd. of Railway & Steamship Clerks*, 313 F.2d 318 (3d Cir. 1963), or by changing the effect of an arbitration award by ignoring its terms with the employer. *Steelworkers Local 4076 v. Steelworkers Local 1465*, 338 F. Supp. 1154, 1162 (W.D. Pa. 1972). However, instead of enforcing the settlement agreements as the "means chosen...under the agreement," the courts below gave

priority to an "agreement" reached outside the CBA process.

The range of "reasonableness" given the union's actions must be limited in these situations by the invocation of the contractually based grievance procedure in order to correct alleged "mistakes." "A union may not arbitrarily ignore a meritorious grievance or handle it in a perfunctory manner." *Griffin v. UAW*, 469 F.2d 181, 183 (4th Cir. 1972). The Fourth Circuit's decision does not explain why the Union's action outside the CBA mechanism was *not* an invalid exercise of its delegated authority in these circumstances.[5]

If the meaning of a CBA can be ascertained under a grievance arbitration procedure, then that procedure must be followed. Under *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582-83 (1960), and *John Wiley & Sons v. Livingston*, 376 U.S. 543, 559 (1964), the question concerning the meaning of the CBA cannot be resolved by the court if the grievance process is available, as the Fourth Circuit itself seemed to recognize, 6a. But, its adoption of what the contract term meant vitiated the authority agreed by the parties as the mechanism for

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[5]When a grievance settlement indicates it is "final" as the Petitioners' grievance settlements were "full and final" in the case at bar, they "must be given effect." *Teamsters Local Unions v. Braswell Motor Freight Lines, Inc.*, 392 F.2d 1, 8 (5th 1968), *cert. denied*, 401 U.S. 937 (1971). A bi-lateral decision not to follow the settlement agreement is irrational and perfunctory under federal labor policy.

resolving their contractual disputes and interpretations, *i.e.*, arbitration or invoking the special Step 4 provision of the CBA grievance procedure to ascertain "the interpretation of this Agreement." App. 515, Section 15.3D. *See Major League Baseball Players Assn. v. Garvey*, 121 S. Ct. 1724, 1729 (2001) ("established law ordinarily precludes a court from resolving the merits of the parties' dispute on the basis of its own factual determinations").

The Fourth Circuit's finding here that the positions of the Union and Postal Service were "rational," 6a, also does not properly address the fact that actions to undermine a grievance settlement are irrational unless the contractual grievance provisions were invoked to do so. In this case they were not. By agreeing here to the withdrawal of the Burnside grievance, the Postal Service and the Union intentionally and deliberately dismissed the only contractually specified mechanism available under the CBA to revoke a grievance settlement and to validate their position under the CBA.

> Thus, if the award at bar is *the parties' chosen instrument for the definitive settlement of grievances* under the Agreement, it is enforceable under § 301. And if the Joint Area Cartage Committee's award is thus enforceable, *it is of course not open to the courts to reweigh the merits of the grievance.*

General Drivers, 372 U.S. at 519 (emphasis added).

It is strikingly contrary to the state of federal labor law to permit a union to "depart" from its "normal practices and established policies and procedures" to revoke grievance settlements as occurred here. Under these conditions, summary judgment should not have been granted to the Respondents, especially where AVP Holmes' testimony put the meaning of the term "nonbargaining unit" directly in dispute. *See Salmanis v. APWU*, Local 7140 & USPS, 2001 U.S. Dist. LEXIS 2072 at *23-24, 145 Lab Cas. (CCH) ¶11, 169 (N.D. Ill. 2001) (denying summary judgment to the Postal Service and Union on DFR claim where the parties settled a grievance contrary to CBA procedures). The Fourth Circuit's decision does just that and extends a new union defense to DFR lawsuits never before granted.

This Court in *Vaca v. Sipes*, 386 U.S. 171 (1967), ruled that grievance settlement procedures "assure" that "similar complaints will be treated consistently," *id.* at 191, even if the employee was to protest the result. *Id.* at 193. Here, the Congress' statutory promise to the nation's workers was to protect grievance settlements. *Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 571 (1976).

There must be the assurance that the "finality rule" will be maintained in the workplace. This Court in *Hines* anticipated that "[t]he grievance processes cannot be expected to be error-free. The finality provision has sufficient force to surmount occasional instances of mistake." 424 U.S. at 571.

The result imposed by the Fourth Circuit here undermines the contractual grievance system as this Court envisioned it would work. In these circumstances, "[t]he contractual system would then cease to qualify as an adequate mechanism to secure individual redress....Congress has put its blessing on private dispute settlement arrangements provided in collective bargaining agreements, but it was anticipated, we are sure, that the contractual machinery would operate within some minimum levels of integrity." *Id.* This "machinery under a collective bargaining agreement is at the very heart of the system of industrial self-government." *Warrior Steel*, 363 U.S. at 581. Here, however, the "heart" of the system was deliberately evaded by the parties to the CBA.

The decision below further diverges from the national norm where no federal court has ever permitted a settled grievance to be undone outside the contractual grievance procedure as occurred here. *See Bakers Union Factory, No. 326 v. ITT Continental Baking Co.*, 749 F.2d 350, 355 (6th Cir. 1984); *Niro v. Fearn Int'l*, 827 F.2d 73 (7th Cir. 1987) (construction of grievance settlement subject to resolution through grievance-arbitration procedure of the CBA); *UMWA Dist. 28 v. VP-5 Mining Co.*, 630 F. Supp. 1210, 1213 (W.D. Va. 1986).

Rather, the Petitioners' grievance settlements amended and supplemented the CBA. *International Union of Operating Engrs., Local 351*, 163 F.3d 916, 919 (5th Cir. 1999). These formal settlement agreements are indeed the parties chosen means to resolve their labor

disputes. As such, they are entitled to enforcement not dissolution, as the other Circuit Courts have held. *Coca-Cola Bottling Co. v. Teamsters, Local No. 688*, 959 F.2d 1438, 1440 (8th Cir.), *cert. denied*, 506 U.S. 1013 (1992); *Ohio Edison Co. v. Ohio Edison Joint Council*, 947 F.2d 786, 787 (6th Cir. 1991); *Tootsie Roll Indus., Inc. v. Local Union No. 1*, 832 F.2d 81, 84 (7th Cir. 1987).

Surprisingly, the decision below implicitly creates an intra-circuit conflict with a prior decision of the Circuit Court directly on point involving the two same Respondents here: *National Postal Mail Handlers Union, Local 305 & United States Postal Service*, 594 F.2d 988 (4th Cir. 1979). There, the court of appeals held that the enforcement of grievance settlements did not have to await further contract process, but became judicially enforceable upon the individual settlement of each grievance: "if the Postal Service remains adamant in its refusal to implement grievance settlements, aggrieved employees...would be subjected to an endless, fruitless succession of grievance complaints and never realize the benefits of an award. Further exhaustion manifestly would be ineffective."[6]

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[6]The *Local 305* case is much like the one at bar, and there Respondent Union sued the Postal Service for failure to implement forty-five grievances reached by the parties at Steps 1 through 4 of the grievance procedure short of arbitration and for violating settlements reached in three class-action grievances brought to force the Postal Service to simply "comply with the settlements in earlier

(continued...)

Although the court below relies on *Air Line Pilots Assn. v. O'Neill*, 499 U.S. 65, 74 (1991), for the general standard that a union is entitled to a wide range of deference with regards to the duty of fair representation, 7a, the duty "is akin to the duty owed by other fiduciaries to their beneficiaries." *Id.* It is impossible to discern in these circumstances how the duty to apply the "full and final" effect to the Plaintiffs' grievance settlements is fulfilled by the Union signing a non-contract memorandum, written by the Postal Service and executed by persons not authorized to do so, in order to strip Petitioners of their rights. Here, the Petitioners sought enforcement of their grievance settlements under Section 301; the Union's duty of fair representation breach was secondary to the independent enforceability of the Petitioners' settlement agreements.

Federal labor law has never permitted an individual employee right to be undermined or written away by the parties on the basis of what could be considered "rational" behavior. Rather, federal law has demanded that each worker be treated according to the "chosen" terms of the applicable CBA. *General Drivers, supra.* That was not done here.

It cannot be within the Union's reasonable range of conduct to treat members of the bargaining unit fairly, by seeking to supersede and revoke meritorious grievance

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[6](...continued)
cases." 594 F.2d at 990.

settlements previously achieved from the employer, by a means outside the grievance process. That act is itself evidence of the Union's bad faith in the treatment of its obligations under Section 301 because "the duty of fair representation protects the individual employee from arbitrary abuses of the settlement device by providing him with recourse against both employer (in a § 301 suit) and union...." *Vaca v. Sipes*, 386 U.S. at 193.

The result achieved by the court of appeals reverses this Court's decision in *Lion Dry Goods, supra* at 28, that settlement agreements are encouraged to maintain labor peace. Therefore, "[F]ederal courts should enforce these agreements on behalf of or against labor organizations***industrial peace can be best obtained only in that way," (quoting *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448, 455).

Consequently, a grave error of fact was presented and ignored. Contrary to the understanding of the Fourth Circuit, the grievance arbitration procedure of the CBA did *not* result in any ruling on the Plaintiffs' status. Rather, it was only through a non-CBA process that Plaintiffs were stripped of their rights.[7]

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[7]As set forth *infra*, the undisputed testimony is that a grievance settlement cannot be overturned except by the invocation of the contract grievance procedure as testified by the National Union President. App. 492, 300, 416 ll.12-15, 362 ll.1-9, 396 ll.10-15, 351 ll.6-9.

In this situation, the Fourth Circuit's finding that the parties to the CBA have always interpreted "nonbargaining unit" to mean "supervisory employees" resolved this genuine issue of fact, rather than leaving the contradictory testimonial evidence to the arbitrator. That holding contradicted uniform federal caselaw and the Fourth Circuit's own decisions in *Zimmerman v. Faculty Assn. of the French Int'l School*, 830 F.2d 1316, 1319 (4th Cir. 1987), that disputes over the meaning of a contract term are not entitled to summary judgment, and *Ross v. Communications Satellite Corp.*, 759 F.2d 355, 364-65 (4th Cir. 1985), since the dispute here rests upon what is the correct interpretation of a CBA and the Respondents rely upon arguments, that are not contained in the agreement.

These distinctions are immense for purposes of sustaining a summary judgment finding of the district court because a genuine issue of fact over the proper process to reverse a settlement agreement existed on the testimony of AVP Holmes, as well as the source of any meaning for the term "nonbargaining unit" that tipped the scales for the courts below.

Consequently, this case raises grave questions concerning the viability of all grievance-arbitration machinery, future employee reliance of the such machinery, and the federal courts' protection of employee rights from noncontractual modification by their labor representative. Only exercise of this Court's supervisory authority now will ensure the consistent application of the Court's prior

directives on the duty of fair representation and enforcement of settlement agreements under Section 301.

CONCLUSION

For these reasons, Petitioners respectfully request that a writ of *certiorari* issue to review the judgment of the court of appeals.

Respectfully submitted,

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UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

JAMES L. PRATT; MICHAEL T. ANGELINI; ERIC J. BROWN,
Plaintiffs-Appellants,

and

ALESHIA V.M. HARRIS,
Plaintiff,

v. No. 00-2424

NATIONAL POSTAL MAILHANDLERS UNION, LOCAL 305; UNITED STATES POSTAL SERVICE,
Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Virginia, at Alexandria.
Claude M. Hilton, Chief District Judge.
(CA-99-1876-A)

Argued: October 29, 2001

Decided: January 10, 2002

Before WIDENER, NIEMEYER, and MOTZ, Circuit Judges.

Affirmed by unpublished opinion. Judge Niemeyer wrote the opinion, in which Judge Widener and Judge Motz joined.

COUNSEL

ARGUED: Michael Ernest Avakian, SMETANA & AVAKIAN, Springfield, Virginia, for Appellants. Andrew A. Chakeres, Capital Metro & Mid Atlantic Area Law Office, UNITED STATES POSTAL SERVICE, Washington, D.C., for Appellee Postal Service; Thamer Eugene Temple, III, MCSWEENEY & CRUMP, P.C., Richmond, Virginia, for Appellee Union. **ON BRIEF**: J. Raymond Sparrow, SHUMATE, KRAFTSON & SPARROW, P.C., Fairfax, Virginia, for Appellants. Helen F. Fahey, United States Attorney, Jeri Kaylene Somers, Assistant United States Attorney, Alexandria, Virginia; Thomas J. Marshall, Managing Counsel, Capital Metro & Mid Atlantic Area Law Office, UNITED STATES POSTAL SERVICE, Washington, D.C., for Appellee Postal Service. G. William Norris, MCSWEENEY & CRUMP, P.C., Richmond, Virginia, for Appellee Union.

Unpublished opinions are not binding precedent in this Circuit. See Local Rule 36(c).

Judge Niemeyer wrote the opinion, in which Judge Widener and Judge Motz joined.

OPINION

NIEMEYER, Circuit Judge:

James Pratt, Michael Angelini, and Eric Brown, United States Postal Service employees, commenced this action against the Postal Service and the National Postal Mailhandlers Union (the "Union"), of which they were members, to challenge a settlement agreement reached between the Postal Service and the Union to adjust their seniority. The district court granted summary judgment to the Postal Service and the Union. We affirm.

I

Pratt, Angelini, and Brown, who were full-time mailhandlers at the Postal Service's Processing and Distribution Center in Merrifield, Virginia, voluntarily transferred to other positions within the Postal Service during 1998 and 1999. Pratt became a custodian at the Stafford, Virginia post office; Angelini became a mailhandler in Tampa, Florida; and Brown became a letter carrier in Springfield, Virginia. Before they transferred, they discussed the risks and consequences of leaving their positions in Merrifield with Union leadership. In each case, the individual was advised that, even if he returned within one year, he might lose his seniority, but that he could file a grievance with the Postal Service to seek to regain his seniority.

Within a year of leaving their positions at Merrifield, Pratt, Angelini, and Brown returned, at various times, to the Merrifield facility. Upon their return, each was converted from full-time status to "part-time flexible"

status and placed on the bottom of the seniority list at Merrifield. All three filed grievances with the Postal Service, seeking to be restored to full-time status and to the seniority positions that they had held before they transferred from Merrifield. The Postal Service and the Union settled each of the grievances by restoring the employee to full-time status and by restoring his seniority to the position he had held before he transferred from Merrifield.

Other part-time flexible and full-time employees who were bypassed by these grievance settlements reached by the Postal Service and the Union, filed a class action grievance against the Postal Service through their shop steward, Dwight Burnside. The Burnside grievance asserted that the settlement agreements between the Postal Service and the Union with respect to Pratt, Angelini, and Brown violated the terms of the applicable collective bargaining agreement between the Postal Service and the Union. Upon reviewing the matter closer, the Postal Service and the Union agreed that they had made a mistake in the manner in which they settled Pratt, Angelini, and Brown's grievances and that those settlements misapplied the applicable provisions of the collective bargaining agreement. Accordingly, the Postal Service and the Union settled the Burnside grievance by agreeing to vacate the earlier settlement agreements involving Pratt, Angelini, and Brown, thereby returning those three employees to parttime flexible status with entry-level seniority, and to withdraw the Burnside grievance.

Thereafter, Pratt, Angelini, and Brown commenced this action against both the Postal Service and the Union, alleging that the Postal Service breached its collective

bargaining agreement with the Union and that the Union, by agreeing to the Burnside settlement, breached its duty of fair representation. They alleged that the Union's agreement furthered the political ambitions of officers and undermined the provisions of the collective bargaining agreement. The plaintiffs also alleged intentional infliction of emotional distress.

On the motion of the Postal Service and the Union for summary judgment, the district court concluded that the Postal Service and the Union had acted properly in voiding the grievance settlements reached between them with respect to Pratt, Angelini, and Brown. In reaching this conclusion, the district court found that the Postal Service and the Union had interpreted the collective bargaining agreement correctly. The district court also concluded that the Union, by agreeing to void the Pratt, Angelini, and Brown grievance settlements, did not violate its duty of fair representation to Union members. Finally, the district court dismissed the employees' claim for intentional infliction of emotional distress because the employees had failed to produce evidence that the defendants' conduct was "outrageous and intolerable."

From the district court's judgment, Pratt, Angelini, and Brown filed this appeal.

II

Pratt, Angelini, and Brown commenced this typical hybrid action against the Postal Service and the Union, alleging that the Postal Service breached the collective bargaining agreement, in violation of *39 U.S.C. § 1208* (the Postal Service's analog for § 301 of the Labor

Management Relations Act of 1947, *29 U.S.C. § 185),* and that the Union breached its duty of fair representation. *See DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 164-65, 76 L. Ed. 2d 476, 103 S. Ct. 2281 (1983) (describing the interactions of claims in a "hybrid § 301/fair representation claim"). To prevail against either party in a hybrid suit, the plaintiffs must prevail against both parties. They must demonstrate both that the revocation of their seniority was contrary to the collective bargaining agreement and that the Union breached its duty of fair representation when it agreed with the Postal Service's interpretation of the collective bargaining agreement. *See Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-71, 47 L. Ed. 2d 231, 96 S. Ct. 1048 (1976); *Adcox v. Teledyne, Inc.*, 21 F.3d 1381, 1386 (6th Cir. 1994).

After reviewing the record and considering the appellants' arguments, we find that the appellants cannot demonstrate that the Union breached its duty of fair representation. Both parties to the collective bargaining agreement, the Postal Service and the Union, agreed to what they believed was the proper application of the collective bargaining agreement in establishing and preserving seniority rights. Their settlement of the Burnside grievance, which voided their earlier settlements with respect to Pratt, Angelini, and Brown, reflected their effort to correct an error that they agreed they had made in settling the earlier grievances. When reviewed against the language of the collective bargaining agreement, we conclude that the positions of the Postal Service and the Union were rational, indeed perhaps indicated, although we need not render any ultimate opinion on the "correct" interpretation of the collective bargaining agreement. *See*

Air Line Pilots Ass'n Int'l v. O'Neill, 499 U.S. 65, 78, 113 L. Ed. 2d 51, 111 S. Ct. 1127 (1991) (stating that a union does not breach its duty of fair representation unless it acts "so far outside a wide range of reasonableness that it is wholly irrational or arbitrary" (internal quotation marks and citation omitted)).

An underlying principle of the collective bargaining agreement, described in Article 12.2D2, is that seniority "is computed from the date of appointment in the craft and continues to accrue so long as service in the craft . . . is uninterrupted." If service is interrupted by voluntary transfer from one postal installation to another, or from one craft to another, Article 12.2F1 requires the employees to begin a new period of seniority. Following the same general principle, Article 12.2G3 of the collective bargaining agreement requires employees changing from another craft to a mailhandler craft to begin a new period of seniority as well.

There is no doubt that Pratt, Angelini, and Brown interrupted their service in their craft and installation when they transferred to other positions within the Postal Service. Accordingly, Articles 12.2F1 and 12.2G3 of the collective bargaining agreement support the conclusion that these employees were required to begin a new period of seniority when they returned to the mailhandler craft at Merrifield.

The wrinkle, according to Pratt, Angelini, and Brown, is a limited exception to the seniority rule, created by Article 12.2G7b, to preserve seniority for employees who transfer to a position outside of the "bargaining unit" and return within one year. Pratt,

Angelini, and Brown argue that "bargaining unit" as used in 12.2G7b refers to mailhandlers in Merrifield. The Postal Service and the Union, however, agreed that the "bargaining unit" referred to all nonsupervisory positions. That interpretation was how the "bargaining unit" was always understood by the parties to the collective bargaining agreement.

The Postal Service and the Union originally negotiated the terms of Article 12.2G7 as part of the 1973 omnibus collective bargaining agreement. At that time, a major theme in the negotiations was to encourage employees to seek management positions. To that end, the parties agreed to make an employee's decision to pursue a management position less risky. Employees leaving the rank and file for management positions were therefore given a one-year grace period during which they could return to their old positions without losing seniority. Since 1973, negotiators have never suggested that Article 12.2G7 gives employees who leave the mailhandler craft for nonmanagement positions a grace period during which they could return without losing seniority. To the contrary, the Union negotiators have continued to recognize that Article 12.2G7 is an incentive provision to encourage employees to try their hand in management. They therefore have always understood positions outside the "bargaining unit" to refer to managerial and supervisory positions.

In addition, the interpretation given to the collective bargaining agreement by the Postal Service and the Union is consistent with the structure of the collective bargaining agreement. Article 12.2G3 requires an employee changing from another craft to mailhandler to begin a new

period of seniority. There is no exception for a mailhandler who returns to the mailhandler craft after leaving the craft for less than one year. This general rule -- that employees who leave a craft or installation lose their seniority -- supports the interpretation of "bargaining unit" that makes the Article 12.2G7 exception more narrow than a universal grace period for mailhandlers to experiment with new positions of all types.

Accordingly, we conclude that the Postal Service and the Union's interpretation clearly falls within a range of reasonableness. And because of that conclusion, we find no breach by the Union of its duty of fair representation. In view of the legal principle that plaintiffs must establish liability of both the Postal Service and the Union to succeed on a hybrid action in court, we need not reach the issue of whether the Postal Service's revocation of Pratt, Angelini, and Brown's restored seniority was actually "correct" under the collective bargaining agreement. *See Hines, 424 U.S. at 570-71.*[1]

Having concluded that the position taken by the Postal Service and the Union was rational, we also conclude that Pratt, Angelini, and Brown's claims for intentional infliction of emotional distress were properly dismissed. Pratt, Angelini, and Brown have not produced any

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[1]Pratt, Angelini and Brown also argue that the Union's action was discriminatorily biased. They allege that two Union stewards were among the mailhandlers whose status was improved with the Burnside settlement. They also allege an animus toward Pratt. Because these appellants have not produced evidence connecting either of these two considerations to the Union's decision, however, both claims must fail.

evidence to demonstrate that the defendants' conduct in reaching the Burnside settlement was "outrageous and intolerable." *See Russo v. White*, 241 Va. 23, 400 S.E.2d 160, 162 (Va. 1991) (requiring clear and convincing evidence that the wrongdoer's conduct was intentional or reckless, that the conduct was "outrageous and intolerable," and that the conduct caused severe emotional distress).

Finally, Pratt, Angelini, and Brown contend that the district court abused its discretion when it taxed costs against them pursuant to Federal Rule of Civil Procedure 54(d) and Local Rule 54(D) of the Eastern District of Virginia. They assert that the taxation was improper because the Bill of Costs was not filed within the time prescribed by Local Rule. However, because Pratt, Angelini, and Brown failed to raise this issue in the district court, we do not consider it here. *See Grossman v. Comm'r of Internal Revenue*, 182 F.3d 275, 280-81 (4th Cir. 1999) (citing *Muth v. United States*, 1 F.3d 246 (4th Cir. 1993)).

For the foregoing reasons, the judgment of the district court is

AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
March 11, 2002

No. 00-2424
CA-99-1876-A

JAMES L. PRATT; MICHAFL T. ANGELINI; ERIC J. BROWN

Plaintiffs - Appellants

and

ALESHIA V.M. HARRIS

Plaintiff

NATIONAL POSTAL MAILHANDLERS UNION, LOCAL 305; UNITED STATES POSTAL SERVICE

On Petition for Rehearing and Rehearing En Banc

The appellants' petition for rehearing and rehearing en banc was submitted to this Court. As no member of this Court or the panel requested a poll on the petition for rehearing en banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and rehearing en banc is denied.

For the Court,

/s/ Patricia S. Connor
Clerk

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

JAMES L. PRATT, et al.,	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No, 99-1876-A
	)	
NATIONAL POSTAL	)	
MAIL HANDLERS,	)	
LOCAL 305 AND	)	
UNITED STATES	)	
POSTAL SERVICE,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION

This matter comes before the Court on Defendants' Motions for Summary Judgment and to strike Plaintiffs' Jury Demand.

Thin action is brought pursuant to § 1208 of the Postal Reorganization Act, 39 U.S.C. § 1208, Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, and under the common law of Virginia. The four Plaintiffs, James Pratt, Michael Angelini, Aleshia Harris and Eric Brown, ("Plaintiffs") allege three counts: Breach of the Collective Bargaining Agreement (Count I); Breach of the Duty of Fair Representation (Count II); and a tort claim for Intentional Infliction of Emotional Distress (Count III). Court II was dismissed as to Defendant

United States Postal Service ("Postal Service") by March 24, 2000 Order of this Court. Plaintiffs seek injunctive relief and unspecified damages arising primarily from their tort claim. Both Defendants now move for Summary Judgment and to Strike the Jury Demand made by Plaintiffs.

This action arises out of the job transfer of the four Plaintiffs. Each began working as a mail handler in the Postal Service's Merrifield, Virginia installation. Each voluntarily transferred from their assignments in Merrifield. Except for Mr. Angelini who remained a mail handler but transferred to Tampa, Florida, each also transferred out of the Mail Handler craft and into other postal crafts. Each plaintiff later transferred back to Merrifield to the mail handler craft within one year.

Initially, each Plaintiff returned to Merrifield as a "part-time flexible" employee ("PTF") beginning a new period of seniority. This was mandated by Article 12.2, part Fl of the collective bargaining agreement between the Mail Handlers Union and the Postal Service. Part Fl provides that when an employee voluntarily transfers from one postal installation to another, or from one craft to another, an employee must be assigned as a PTF beginning a new period of seniority. Plaintiff Angelini transferred from the postal installation at Merrifield to the postal installation in Tampa. He then transferred back to Merrifield and was placed as a PTF, as set forth in part Fl. For Plaintiffs Pratt, Brown and Harris, who were returning from other crafts, the PTF assignment was in accord with Article 12.2, part G3, which states, "When an employee changes from another craft to Mail Handler, the employee will begin a new period of seniority."

Plaintiffs brought suit claiming that they were entitled to return as "full-time regular" employees with their former seniority intact. Subparts bl and b2 of Article 12.2 G7b provide that "[a]n employee who left the craft and/or installation...will begin a new period of seniority unless the employee returns within one year, "in which case the employee will retain the seniority he or she had at the time they left." Plaintiffs believed this provision applied to them because they each returned within one year. However, under G7b, the one year window for craft employees to return and regain their seniority applies only when the employee returns from a nonbargaining unit position within the Postal Service. "Nonbargaining unit position" has always been construed by the Mail Handlers Union and the Postal Service to mean supervisory and management positions. None of the plaintiffs returned from a supervisory or management position.

The plaintiffs filed grievances when placed as PTF's upon their return to Merrifield. The result was that the plaintiffs' full time status and seniority was restored. However, this action was in violation of parts Fl and G7b of Article 12.2 in that it bypassed many other PTF employees awaiting full time status. The Union took corrective action to rectify this mistake and a "Memorandum of Agreement" was issued that voided the plaintiffs' prior grievance settlements and readjusted the plaintiffs' seniority and status so as to be "in accordance with the terms of the National Agreement." Plaintiffs then reverted to PTF status with new seniority periods that commenced from their return date to Merrifield.

Summary Judgment is appropriate where there is no genuine issue as to any material fact. See FED R. CIV P. 56(C). Once a motion for summary judgment is properly made and supported, the opposing party has the burden of showing that a genuine dispute exists. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986). A material fact in dispute appears when its existence or non-existence could lead a jury to different outcomes. *See Anderson v. Liberty Lobby, Inc.*, 475 U.S. 242, 243(1986). A genuine issue exists when there is sufficient evidence on which a reasonable jury could return a verdict in favor of the nonmoving party. *See id.* Mere speculation by the non-moving party "cannot create a genuine issue of material fact." *Beale v. Hardy*, 769 F.2d 213, 214 (4th Cir. 1985); *See also Ash v. United Parcel Serv., Inc.*, 800 F.2d 409, 411-12(4th Cir. 1986). Summary judgment is appropriate when, after discovery, a party has failed to make a "showing sufficient to establish the existence of an element essential to that party's case, and on which that parry will bear the burden of proof at trial" *Celotex Corp. v. Catrett*, 477 US. 317, 322 (1986). When a motion for summary judgment is made, the evidence presented must always be taken in the light most favorable to the non-moving party. *See Smith v. Virginia Commonwealth Univ.*, 84 F.3d 672, 675 (4th Cir. 1996)(en banc).

Plaintiffs' interpretation of G7b puts the provision at odds with part G3 rendering it meaningless. Under contract law, an interpretation that gives meaning to the entire contract is preferred. *See Island Creek Coal Co. v. Lake Shores Inc.*, 832 F.2d 274, 277 (4th Cir. 1987). Plaintiffs assert that their grievance settlements were final and binding, even if they were contrary to the bargaining

agreement. However, erroneous settlements need not be enforced.

Plaintiffs were not entitled to have their seniority restored so Local 305 and the Postal Service acted in the best interest of those who it represents by voiding the plaintiffs' grievance settlement. As such, Local 305 and the Postal Service did nor breach a contract or fail in its fair duty of representation.

Collective bargaining agreements are not ordinary contracts. *Transportation Communication Employee Union*, 385 U.S. 157 (1966). These agreements are handled through arbitration and grievance policies. The Postal Service's grievance process has established a line of arbitration decisions that hold that settlement agreements executed in violation of the terms of a collective bargaining agreement are void and unenforceable. As the plaintiffs' grievance settlements were inconsistent with the national agreement, they were voided.

Local 305 and the Postal Service never breached their duties of fair representation. As the exclusive bargaining representative of any group of employees, a union has a duty of fair representation to those employees. *See Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953); *Bowen v. United States Postal Serv.*, 459 U 5. 212, 218 (1983). This duty is breached only if the union's conduct is "arbitrary, discriminatory or in bad faith." *Vaca v Sipes*, 386 U S. 171 (1967); *See also Griffin v. International Union UAW*, 469 F.3d 181 (4th Cir. 1972). To fail under this standard, a union's actions must be "so far outside a wide range of reasonableness as to be irrational." *Air Line Pilots Assn. v. O'Neill*, 499 U 5. 65, 67

(1991); *see alsoBenson v. Communication Workers of Amer.*, 866 F. Supp. 910, 914 (E.D.Va. 1994), *aff'd* 81 F.3d 148 (4th Cir. 1996), *cert. denied*, 519 U.S. 820 (1996).

Neither Local 305 nor the Postal Service acted in a manner that was arbitrary. A union has a duty to represent the collective interests of all its members. *IBEW v. Foust*, 442 U.S. 42, 47 (1979). In this case, Local 305 was protecting the interests of all its members by reestablishing proper seniority status to the plaintiffs. Other members of the union would have lost their seniority rights had the invalid grievance settlements been enforced. Local 305 was correcting a mistake. Local 305's actions were, therefore, not arbitrary, but responsible and rational to protect the interests of the group it represents.

Plaintiffs fail to establish that Local 305 or the Postal Service acted in bad faith or with discriminatory intent. A "bad faith claim may be established only by a showing of fraud or deceitful or dishonest action." *Brown v International Brotherhood of Teamsters*, 1997 U.S. Dist. LEXIS 21831 (E.D. Va. 1997). Plaintiffs speculate that Local 305 rescinded the settlement agreements in order to seek revenge against Mr. Pratt for his union activities. However, they offer nothing beyond speculation in the way of proof. The Postal Service employee who made the conclusion that these four employees were not entitled to have their seniority restored did not know the plaintiffs, their background or union activities. She could not have been discriminating against the plaintiffs because she knew nothing about them. The defendants ware trying to

rectify a mistake in accordance with their national agre ement and established policies. There is no evidence of fraud or deceit by the defendants.

Plaintiffs' claim for Intentional Infliction of emotional harm against Local 305 also fails. Emotional distress claims like this one are "not favored" under Virginia law. *Ruth v. Fletcher*, 237 Va. 366, 373, 377 S.E.2d 412, 415 (1989). Plaintiff must produce evidence showing that the conduct is outrageous and intolerable. *Russo v. White*, 241 Va. 23, 26, 400 S.E.2d 161-162 (1991). Mere conclusory allegations are insufficient. *Id.* at 24. Plaintiffs have not provided evidence to show that Defendants' conduct was "outrageous or intolerable." They allege that Plaintiffs felt embarrassed because co-workers called them "PTF's" and that they were adversely affected by losing their seniority status. The defendants were attempting to enforce its national policy with no bad faith intent. This conduct is neither outrageous or intolerable. No action made by the defendants would meet the high standard of extreme behavior to establish liability under Virginia law for an emotional distress claim.

As the Court finds that Summary Judgment should be granted in this case, the Motion to Strike Plaintiffs' Jury Demand is moot.

An appropriate Order shall issue.

/s/ Claude M. Hilton
CHIEF UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
August 24, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

JAMES L. PRATT, et al.,	)
Plaintiffs,	)
	)
v.	)Civil Action No, 99-1876-A
	)
NATIONAL POSTAL	)
MAIL HANDLERS,	)
LOCAL 305 AND	)
UNITED STATES	)
POSTAL SERVICE,	)
	)
Defendants.	)

ORDER

This matter comes before the Court on Plaintiff's Motion for Reconsideration in which it asks this Court to amend or alter the Order of August 24, 2000, granting summary judgment to the defendants and dismissing this case. It appearing to the Court that Plaintiffs have raised no new arguments and that this Court's Order and accompanying Memorandum Opinion were correct, it is hereby

ORDERED that Plaintiff's Motion for Reconsidera

tion is DENIED.

/s/ Claude M. Hilton
CHIEF UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
September 29, 2000

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

JAMES L. PRATT, et al.,	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No, 99-1876-A
	)	
NATIONAL POSTAL MAIL HANDLERS, LOCAL 305 AND UNITED STATES POSTAL SERVICE,	)	
	)	
Defendants.	)	

ORDER

This matter comes before the Court on Defendants' Motions for Summary Judgement and Defendants' Motion to Strike Plaintiffs' Jury Demand. For reasons stated in accompanying Memorandum Opinion, it is hereby

ORDERED the Defendants' Motions for Summary Judgment are GRANTED and that this case is DISMISSED.

/s/ Claude M. Hilton
CHIEF UNITED STATES DISTRICT JUDGE

Alexandria, Virginia
August 24, 2000

No. 01-1871

Supreme Court, U.S.
FILED
AUG - 5 2002
OFFICE OF THE CLERK

In The
Supreme Court of the United States

JAMES L. PRATT, MICHAEL P. ANGELINI
and ERIC J. BROWN,
Petitioner,

v.

NATIONAL POSTAL MAIL
HANDLERS UNION, LOCAL 305
and UNITED STATES POSTAL SERVICE,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION OF RESPONDENT NATIONAL POSTAL MAIL HANDLERS UNION, LOCAL 305

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STATEMENT OF THE CASE

This case arose out of Petitioners' job transfers within the United States Postal Service, as the petition recounts. Petitioners' Statement of the Case, however, contains important misstatements and omissions of facts on which this Court's consideration of the petition will turn.

Each of the Petitioners initially worked in the mail handler craft at the Postal Service's Merrifield, Virginia installation. Consequently, each was represented by the National Postal Mail Handlers Union, Local 305, concerning wages, hours and other terms and conditions of work. Each voluntarily transferred out of the Merrifield installation to other non-supervisory positions. Two of the three left the mail handler craft for positions in other postal crafts. Petitioner Angelini remained a mail handler. Each voluntarily transferred back to Merrifield and to the mail handler craft within one year. (Pet. A. 3a).

Article 12.2D2 of the Union's national collective bargaining agreement provides that a mail handler's seniority is computed from the date of employment in the craft so long as service in the craft and in the postal installation is uninterrupted. Following this principle, Article 12.2F1 requires that, when an employee voluntarily transfers from one installation to another, or from one craft to another, the employee must begin a new period of seniority. Article 12.2G3 similarly requires employees changing from other crafts to the mail handler craft to begin a new seniority period. (Pet. A. 7a).

On return to Merrifield, each of the Petitioners began a new seniority period in accordance with these contract provisions. (Pet. A. 3a-4a). All three requested Local 305's administrative vice president to file grievances on their behalf seeking restoration of their former seniority and status. (Pet. A. 4a). Each sought to rely on Article 12.2G7 of the collective bargaining agreement, which provides an exception to the required new seniority period when a mail handler returns to the craft from a "nonbargaining unit position" within one year. (Pet. 5; Pet. A. 7a).

The administrative vice president discussed the pending grievances separately with Local 305's president and with an official in the Union's national contract administration department. Both instructed the administrative vice president that the term "nonbargaining unit position" in Article 12.2G7 referred to a supervisory position and that, as a result, the article's exception did not apply to the Petitioners. (J.A.[1] 121 ¶ 4, 290-94, 313-14).

The provisions of Article 12.2G7 originally were negotiated in 1973 as part of an omnibus collective bargaining agreement between the Postal Service and all postal crafts. (Pet. A. 8a). The term "nonbargaining unit position" was first used in the article in the 1978 omnibus agreement. (J.A. 74¶4). In those omnibus agreements, "bargaining unit position" referred to all craft positions, and "nonbargaining unit position" referred to supervisory jobs. (J.A. 317). The exception for returning from a nonbargaining unit position is an

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1 Citations to "J.A." are to the parties' joint appendix in the appeal below.

incentive allowing mail handler craft employees to pursue supervisory positions without risk of losing their craft seniority if unsuccessful in the first year. (Pet. A. 8a). The Union and the Postal Service always have interpreted and applied Article 12.2G7 in this way. (Pet. A. 8a; J.A. 481).

Notwithstanding this instruction and history, the administrative vice president pressed Petitioners' grievances and initially obtained written grievance settlements restoring the seniority and status of each. (Pet. A. 4a). Because seniority is always relative to others, Petitioners' restoration bypassed other mail handlers at the Merrifield installation. Those bypassed mail handlers were the subject of a class action grievance that became known as the "Burnside Grievance." (Pet. A. 4a). The Burnside grievance asserted that Petitioners' prior grievance settlements violated Article 12.2F1. (Pet. A. 4a). The grievance sought a redetermination of seniority and status for everyone affected by Petitioners' restoration. (J.A. 200-01).

Postal Service management denied the Burnside grievance at the first step of the grievance process. (J.A. 228-30, 532). When the Postal Service's plant manager learned of the grievance at the second step of the process, he was confused and concerned because local union officials were taking opposite positions concerning Petitioners' seniority rights. (J.A. 239-41). He contacted Local 305's president. The two recognized the error made in initially settling the Petitioners' grievances. (Pet. A. 4a). They agreed to resolve the Burnside grievance by vacating the

Petitioners' settlements, withdrawing the Burnside grievance, and reverting everyone to their seniority and status before Petitioners' initial grievance settlements.[2] (Pet. A. 4a).

Local 305's president instructed local union representatives to withdraw the Burnside grievance and sign an agreement with the Postal Service vacating the Petitioners' prior grievance settlements. (J.A. 324-25). During the following weeks, the Union confirmed its position in a letter to the plant manager and subsequently signed a "memorandum of agreement" to this effect. (J.A. 342, 352-53).

REASONS FOR DENYING THE WRIT

Petitioners present four questions mirroring their arguments for granting the requested writ. Essentially, Petitioners assert that the United States Court of Appeals for the Fourth Circuit erred by: (i) holding that the Union properly revoked Petitioners' grievance settlements by means "outside" the grievance process; (ii) holding that grievance settlements in general are no longer enforceable contracts; (iii) resolving on summary judgment a disputed contract term; and (iv) holding that federal courts may resolve contract disputes on summary judgment rather than confining the parties to their

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[2] Both the plant manager and Local 305's president were authorized grievance representatives at the second step of the grievance process. Article 15.2, step 2(c), of the collective bargaining agreement designates the plant manager as the Postal Service's representative. (J.A. 513). The local union's president is an authorized representative under Article IV § 5(19) of the Union's constitution. (J.A. 112).

contractual dispute resolution process. From these self-sustaining assertions, Petitioners contend that the opinion of the court of appeals establishes "a dangerous anomaly in the law" where employers and unions now may freely repudiate grievance settlements. (Pet. 12).

The opinion below, however, does not hold what Petitioners claim it holds. Neither the opinion nor the underlying record raise any of the questions presented by Petitioners. This Court, therefore, need never reach the merits of Petitioners' arguments.

This case is fact-driven, as the uncontested facts set out above demonstrate. The decision of the court of appeals was a straight-forward affirmation of the district court's exercise of judicial authority under Federal Rule of Civil Procedure 56. It is in accord in all respects with established principles of federal labor law, and is not in conflict with any decision of this Court or a United States court of appeals. There is no reason to grant the requested writ.

I.

QUESTION 1 IS BASED ON A MISSTATEMENT OF THE RECORD. THE ERROR IN PETITIONERS' GRIEVANCE SETTLEMENTS WAS RESOLVED BY THE CONTRACTUAL GRIEVANCE PROCESS.

Petitioners contend that the Union breached its duty of fair representation by revoking their grievance settlements "outside" the contractual grievance process. (Pet. Question 1; Pet. 13-14). To create

support for this contention, Petitioners segregate two facts - the withdrawal of the Burnside grievance and the execution of the memorandum of agreement revoking Petitioners' prior settlement agreements - and treat these as unrelated events. (Pet. 8, 13). Petitioners then argue that, by withdrawing the Burnside grievance, the Union and the Postal Service dismissed the only available contractual means of resolving the situation. (Pet. 15). Thus, Petitioners maintain that the memorandum of agreement was a "non-contract process," and that signing it was a breach of the Union's duty to them. (Pet. 13-15, 19).

This contention ignores the facts. The Burnside grievance withdrawal and the memorandum of agreement are inextricably linked. Neither would have occurred without the other. The Burnside grievance proceeded to the second step of the contractual process, where it was resolved by the mutual agreement of designated Union and Postal Service representatives. Under that agreement, the Union would withdraw its grievance and in return the Postal Service would correct the Petitioners' seniority and status. The court of appeals, on de novo review, specifically found that the settlement of the Burnside grievance revoked the Petitioners' prior grievance settlements. (Pet. A. 6a).

Petitioners acknowledge that the Burnside grievance was a "contractually specified mechanism" to revoke their settlements. (Pet. 15). That mechanism was used. The Petitioners cannot reasonably maintain on this record that the revocation of their settlements

was accomplished outside the contractual process. This Court does not grant a writ of certiorari simply to review the findings of uncontested facts by two lower courts absent an extraordinary reason. *Goodman v. Lukens Steel Co.*, 482 U.S. 656, 665 (1987); *Graves Mfg. Co. v. Linde Co.*, 336 U.S. 271, 275 (1949). Nothing presented in this petition should compel the Court to do so here.

Once Petitioners' factual misstatement is recognized, there is no basis for their challenge to the finding below that the Union satisfied its duty of fair representation. A union does not breach this duty unless it acts "so far outside a wide range of reasonableness as to be irrational." *Air Line Pilots Ass'n v. O'Neill*, 499 U.S. 65, 67 (1991) (internal quotation marks and citation omitted). The Union's effort to correct the initial misapplication of the collective bargaining agreement and enforce the agreement in accordance with the long-held, mutual understanding of the Union and Postal Service was imminently reasonable and rational. The Union had the right, and indeed the obligation, to enforce its good faith understanding of the contract for the collective good, even when that position seems contrary to the immedia.e interests of the Petitioners. *See Humphrey v. Moore*, 375 U.S. 335, 349-50 (1964). It did so within the contractual process, as the court of appeals found. Petitioners' Question 1, therefore, presents no issue warranting this Court's review.

II.

QUESTION 2 MISSTATES THE HOLDING OF THE COURT OF APPEALS. THE HOLDING IS IN ACCORD WITH PRIOR DECISIONS OF THIS COURT AND OTHER CIRCUITS.

Petitioners assert the court of appeals held grievance settlements are "no longer independently enforceable contracts." (Pet. Question 2; Pet. 17-18). The court, however, never reached the question of enforceability of their grievance settlements. It held only that the Union and Postal Service's interpretation of their collective bargaining agreement was reasonable and rational, and that the two parties enforced their interpretation through the contractual process. (Pet. A. 6a, 9a). Given this holding, the court did not need to consider the viability of Petitioners' interpretation or the enforceability of their grievance settlements. Where the interpretation of the parties to the collective bargaining agreement is reasonable and rational, a court does not substitute and enforce the preferred interpretation of others, even that of the court. *See Air Line Pilots Ass'n*, 499 U.S. at 78; *Humphrey*, 375 U.S. at 349-51.

In effect it would not matter whether the court of appeals held Petitioners' initial settlements were enforceable. Those settlements would not be held sacrosanct. The collective bargaining representatives could modify or even revoke those settlements, as they did here, so long as their action was based on good faith and a rational basis. Indeed, collective bargaining

representatives potentially change previously guaranteed rights of employees every time they negotiate terms of work.

Petitioners cite decisions from the Fifth, Sixth, Seventh and Eighth Circuits supporting the primacy of contractual dispute resolution processes and resolutions reached under them. (Pet. 17-18). Unlike the present case, each of those cited cases involved a dispute between the employer and union about the meaning of their contract and a unilateral effort to repudiate a valid resolution of the dispute. The court in each decision upheld the enforceability of the parties' contractual process and valid resolutions reached under the process.

There is no conflict with those decisions here. The principles underlying those decisions are not at issue in this case. There has never been a dispute between the Union and Postal Service about the meaning of their collective bargaining agreement or the enforcement of it. The decision below does not challenge the primacy of the parties' grievance resolution process or the decisions reached under the process. Rather, it upholds the process and the resolution. It recognizes the parties' ability to correct the initial error in settling Petitioners' grievances with a rational resolution of the Burnside grievance that followed. The decision never held any grievance resolution unenforceable and does not raise the issue presented in Question 2 of the petition.

III.

QUESTIONS 3 AND 4 ALSO MISSTATE THE HOLDING BELOW. THE COURT OF APPEALS NEVER DETERMINED THE MEANING OF ANY DISPUTED CONTRACT TERM.

Petitioners interpret the term "nonbargaining unit position" in Article 12.2G7 to mean any non-mail handler position. They maintain that, under this interpretation, they fit within the exception to the general rule requiring them to begin a new seniority period. The Union and the Postal Service have maintained steadfastly that a "nonbargaining unit position" is a supervisory position and, since none of the Petitioners returned from a supervisory position, the exception in Article 12.2G7 does not apply.

Petitioners assert now that the court of appeals erred by resolving the disputed interpretation of the term "nonbargaining unit position." (Pet. Questions 3 and 4; Pet. 21). This assertion again misstates the court's holding, and Petitioners' arguments supporting this assertion have no foundation. The court below did not decide the meaning of this term. It specifically stated twice in its opinion that it reached no decision on the "correct" interpretation. (Pet. A. 6a, 9a). Rather, it concluded only that the shared interpretation of the Union and Postal Service was rational and fell "within a range of reasonableness." (Pet. A. 6a, 9a). This conclusion is all that was necessary for the court to hold that the Union did not breach its duty of fair representation, *see Air Line Pilots Ass'n*, 499 U.S. at 78, and hence to affirm summary judgment for both the

Union and the Postal Service. *See Hines v. Anchor Motor Freight, Inc.*, 424 U.S. 554, 570-71 (1976) (complainant must show a contract violation and also a breach of the duty of fair representation to prevail against either respondent).

This conclusion is well-supported by the record. As the court of appeals noted, the Union and the Postal Service's interpretation is consistent with the negotiating history between the two and with some twenty-five years of interpretation and enforcement. (Pet. A. 7a-8a). It also is consistent with the provisions for computing seniority in Article 12.2D2 and for beginning a new seniority period in 12.2F1 and G3. (Pet. A. 8a-9a). Petitioners' preferred interpretation, granting a universal grace period for mail handlers to try any non-mail handler position, on the other hand, would create an exception that all but swallows the rule in 12.2D2 and would render 12.2F1 and G3 meaningless. Moreover, one of the Petitioners does not qualify for the exception even as they interpret it. Mr. Angelini left the Merrifield installation for another mail handler position. (Pet. 4; Pet. A. 3a). He did not return from a nonbargaining unit position under any interpretation. Petitioners have never explained this.

The court of appeals did not resolve any material dispute about the meaning of the contract term. It did not need to do so in order to affirm the decision of the district court. Its holding does not raise the issues Petitioners present in Questions 3 and 4. These questions provide no basis for the requested writ.

CONCLUSION

The record and decision below support none of the questions presented in this petition. For these reasons, the Union respectfully requests this Court to deny the petition for a writ of certiorari.

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(3)

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IN THE
Supreme Court of the United States
OCTOBER TERM, 2001

JAMES L. PRATT, MICHAEL T. ANGELINI, and ERIC J. BROWN,

Petitioners,

v.

NATIONAL POSTAL MAIL HANDLERS UNION, LOCAL 305 and UNITED STATES POSTAL SERVICE,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

PETITIONER'S REPLY BRIEF

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Squarely presented in this case is the question whether employee grievance settlements are enforceable under Section 301 of the Labor Act.

1. Notwithstanding the Respondent Union's allegations that the Petition misstates the record and misstates the decision of the Court of Appeals, nothing in its Response proves its theory. The reason is apparent, for this case was dismissed on summary judgment with a record of genuine facts that Petitioners have clearly shown are in dispute.

Review is demonstrated here first with the mistreatment of employees by their collective bargaining representative, which the Courts below have now held they are completely powerless to contest. Whether or not employees may be treated by their Union and Employer with processes, procedures, and deprivations not in accordance with the collective bargaining agreement ("CBA") is directly at issue here.

As set forth in the Petition at 8-9, each Petitioner had their Grievance Settlements revoked by a procedure that not a single witness was able to testify was proper under the CBA. Moreover, each witness in the trial court acknowledged that they had never seen employees treated in the manner the Petitioners here have been treated.

The Union's Response does not dispute that there is no record to support the Court of Appeals' conclusion that the Burnside grievance was settled with a follow-on agreement to revoke the Petitioners' settlements. As set forth in the Petition, the Postal Service official that actually signed the dismissal of the Burnside grievance never testified that an "agreement" to later revoke the

Petitioner's grievance settlements had been reached with the Union. Neither did the Union's AVP.

Moreover, not a single witness testified that such a specific *quid pro quo* had been agreed to by the Union and the Postal Service. The Petition here confronts the Respondent Union with this record fact. The Response relies solely on the statement that "[t]he court of appeals, on de novo review, specifically found that the settlement of the Burnside grievance revoked the Petitioners' prior grievance settlements." Response at 6.

Noticeably missing from the Union's contention is the fact that the district court never made this finding concerning the Burnside grievance. The allegation appears for the first time in the Court of Appeals' opinion. The district court below believed that the Union and the Employer were simply entitled to void the Petitioners' settlements, not that they had agreed to do so with the withdrawal of Burnside's grievance. *See* Pet. 17a.[1]

If there was an agreement to withdraw the Burnside grievance and adversely affect the Petitioners' rights, the effort was not in accordance with the CBA as Petitioners have shown. In fact, nothing in the Burnside withdrawal document supports the Court of Appeals' finding.

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[1]Resolution of the factual dispute between the Union's version of these facts and AVP Holmes' version of the facts, resulted in resolving a material fact question. The dismissal of the employees' case on summary judgment was reached in error.

Rather, the Burnside grievance withdrawal document states:

> Management and the Union agree to withdraw grievance #NOVA99-DFB015 from any and all grievance procedures forthwith.

Jt. App. 231.[2]

As pointed out in the Petition, and not disputed in the Response, serious consequences to collective bargaining and employee rights are at risk if union-employer side agreements can discipline or diminish the rights of employees. Pet. 17. Nothing in the Local Union President's letter to the Postal Service and the Memorandum identified at page 4 of the Response (J.A. 342, 352-53) supports the proposition that the demise of the Burnside grievance was for the purpose of revoking the Petitioners' grievance settlements (and contrary to the withdrawal language itself).

In fact, no evidence in the record shows that Mr. Burnside had an agreement that the Petitioners' rights would be revoked if the Postal Service agreed to a withdrawal of his grievance. If there was any, it would have been cited to the Court.

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[2]The withdrawal here was without reservation and applied by its own terms to "any and all" procedures. The claim that it activated a revocation process is unfounded.

Neither is there any evidence in the record from the signatories to the Memorandum of Agreement, Ms. McCrary and Mr. Manego, that their agreement to revoke the Petitioners' grievance settlements had anything to do with the Burnside withdrawal. Nothing in the language of the Burnside grievance and the Memorandum of Agreement supports the contention made in the Response.[3]

If under the duty of fair representation, unions are positioned to circumvent grievance procedures in a manner effecting the employment rights of employees, affected employees must be permitted to insist upon compliance with the contractual grievance procedure. If not, then covered employees truly have lost all rights. No act of the Union could be more arbitrary than one that utterly prevents him from correcting "abuses of the settlement device by providing him with recourse against both employer (in a § 301 suit) and union." *Vaca v. Sipes*, 386 U.S. 171, 193 (1967). This interest is of maximum concern to employees covered by the Act.

2. The Respondent claims that the Petitioners err in claiming that the courts below resolved the contractual question of what the CBA meant rather than leaving the

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[3]Contrary to the assertion in the Response that this Court does not sit to review uncontested facts, here the central "facts" are fully in contest. Petitioners recognize that the Petition and the Reply Brief appear to be factually intensive. When the resolution of material facts erroneously occurs on summary judgment, evidence of the disputed facts needs to be identified to the Court.

interpretation of the CBA to the bargain struck, *i.e.*, to the procedures under the grievance arbitration procedure.

The Court of Appeals below clearly affirmed the summary judgment decision of the district court. The district court, however, actually determined what the Article 12.2 G7b provision meant: "however, under G7b, the one year window for craft employees to return and regain their seniority applies only when the employee returns from a nonbargaining unit position within the Postal Service....None of the plaintiffs returned from a supervisory or management position." Pet. 15a. Indeed, the district court found that the Petitioners' settlement agreements were "in violation of parts F1 and G7b of Article 12.2." *Id.*

The Court of Appeals agreed that "[t]he district court found that the Postal Service and the Union had interpreted the collective bargaining agreement correctly." Pet. 5a. The Court of Appeals picked up on this sentiment and reviewed the CBA term itself for the ostensible purpose of examining the reasonableness of the Union's action. Pet. 8a-9a. The Court did note that it did not need to determine what was the correct meaning of the Article. Pet. 6a.

The Court of Appeals' undertaking harkens this Court back to a time when the Court had to correct "[t]he lower courts" when they also "had a like preoccupation with ordinary contract law." *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. 564, 567 (1960). It

reversed then and must do so again now. "The courts, therefore, have no business weighing the merits of the grievance, considering whether there is equity in a particular claim, or determining whether there is particular language in the written instrument which will support the claim." *Id.* at 568.

As set forth in the Petition at 14-15, it is not for the federal courts to resolve the merits of a grievance that could be brought directly under a CBA. *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582-83 (1960), *John Wiley & Sons v. Livingston*, 376 U.S. 543, 559 (1964), *Major League Baseball Players Assn. v. Garvey*, 121 S. Ct. 1724, 1729 (2001). Whether the parties' action was "rational" was beyond the Court of Appeals' power to find.

Moreover, contrary to the Response at 10, it was also beyond the authority of the courts below to undertake this terminology evaluation of the CBA or whether the action taken against the Petitioners fell "within a range of reasonableness." Under *Air Line Pilots Assn. v. O'Neill,* 499 U.S. 65, 78 (1991), this Court applies the reasonable standard of review to ***arbitration decisions***, not to the review of non-CBA processes. *See e.g.*, *Bowen v. United States Postal Service*, 459 U.S. 212, 242 (1983) (union liable for inducing the employer to commit a breach of contract).

Respondent's further admission that the Court of Appeals permissibly examined the underlying CBA for

"reasonableness," also runs directly counter to this Court's decision in *General Drivers, Warehousemen & Helpers, Local No. 89 v. Riss & Co.*, 372 U.S. 517 (1963), that contract review is beyond the power of the federal courts. The claim highlights the need for this question to be resolved under the Court's supervisory function.

3. The Union's Response Brief asserts that whether the Petitioners' grievance settlements are enforceable contracts was never reached by the Court of Appeals, as is claimed in the second Question Presented. Therefore, it contends the decision below is not contrary to decisions in other circuits.

But, Respondent Union's argument is based on the erroneous belief that the central issue here is that a process was employed by the Union and the Postal Service, and even if the process employed had no basis in contract, "a rational resolution of the Burnside grievance [] followed." Response at 9. Whether or not that was true, there is no evidence in the record or a finding by the district court that the Burnside grievance had any other result then a complete dismissal of the Union's grievance as stated on the face of the withdrawal agreement set forth *supra*.

The Court of Appeals' erroneous finding leads the Union to conclude that the there is no circuit conflict present simply because the cases involved disputes between a union and employer, rather then with an

employee. As Petitioners have shown, the federal courts carefully examine cases where an employee's right is at risk. The cases have never dismissed the employee's competing evidence out of hand on summary judgment.

4. The Respondent's inability to address the central caselaw set forth in the Petition highlights the extent to which the courts below did err in establishing new rules for enforcement under Section 301 and with raising the bar of the duty of fair representation even higher for working men and women who are powerless to bargain individually. *Vaca v. Sipes*, *supra*.

Without this Court's review, the courts below will continue to narrow federal common law policy and subvert the intent of this Court to confine actions in the workplace to the terms of controlling contracts. "That policy can be effectuated *only* if the means chosen by the parties for settlement of their differences under a collective bargaining agreement is given *full play*." *United Steelworkers of America v. American Mfg. Co.*, 363 U.S. at 566 (1960) (emphasis added).

This case presents the important question whether the means for employers and labor organizations to resolve workplace grievances may lawfully bypass the contracted for mechanism in the CBA.

CONCLUSION

WHEREFORE, Petitioners respectfully request that a writ of *certiorari* issue to review the judgment of the court of appeals.

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